

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

THOMAS HOFFMANN,)	
)	
Plaintiff,)	
)	
vs.)	No. 4:05-CV-2221 (CEJ)
)	
MEDTRONIC, INC., d/b/a)	
MEDTRONIC MINIMED, et al.,)	
)	
Defendants.)	

ORDER

The scheduling orders entered in this case required plaintiff to make disclosures pursuant to Rule 26(a)(1), Fed.R.Civ.P., no later than February 15, 2006. In addition, plaintiff was required to disclose his expert witnesses and provide their reports no later than May 1, 2006, and to make those witnesses available for deposition no later than June 30, 2006.

On June 30, 2006, defendant Medtronic Minimed, Inc., filed a motion for summary judgment and a motion for protective order and stay of discovery, stating that plaintiff failed to (1) make disclosures pursuant to Rule 26(a)(1), (2) respond to a letter from defense counsel requesting such disclosures, (3) disclose expert witnesses and provide their reports pursuant to Rule 26(a)(2), and (4) make expert witnesses available for deposition. Plaintiff has not sought extensions for any of these deadlines. In its motion for summary judgment, defendant argues that plaintiff is now precluded from presenting any evidence and cannot prevail on his product liability claim. Defendant also asks to be excused from its obligation to produce expert witnesses pending resolution of

its motion for summary judgment. Plaintiff has not responded to defendant's motion for protective order and stay and his time for doing so has expired.

Rule 16(f) provides that:

If a party or party's attorney fails to obey a scheduling or pretrial order, . . . the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B),(C),(D).

Rule 37(b)(2) authorizes the court to enter orders "refusing to allow the disobedient party to support . . . designated claims . . . or prohibiting that party from introducing designated matters in evidence," Rule 37(b)(2)(B), or "striking out pleadings . . . or dismissing the action." Rule 37(b)(2)(C). In addition, the court may hold the disobedient party in contempt of court. Rule 37(b)(2)(D).


Finally, Rule 41(b) permits the court to dismiss an action "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of the court."

Accordingly,

IT IS HEREBY ORDERED that plaintiff shall show cause in writing, not later than **August 4, 2006**, why this action should not be dismissed, with prejudice, pursuant to Rules 16, 37(b)(2)(C), and 41(b).

IT IS FURTHER ORDERED that defendant is relieved of its obligations to request and complete a medical examination pursuant to Rule 35, disclose expert witnesses or provide their reports

pursuant to Rule 26(a)(2), or make experts available for deposition, pending further order of the Court.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 24th day of July, 2006.